

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARK D. CANTRELL</b>	)	
Claimant	)	
VS.	)	
	)	
<b>JOHNSON COUNTY BASEMENTS, INC.</b>	)	Docket No. 198,802
Respondent	)	
AND	)	
	)	
<b>NEW HAMPSHIRE INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from an Award entered by Assistant Director Brad E. Avery on April 9, 1997. The Appeals Board heard oral argument September 16, 1997.

**APPEARANCES**

Claimant appeared by his attorney, Derek R. Chappell of Ottawa, Kansas. Respondent and its insurance carrier appeared by their attorney, John B. Rathmel of Overland Park, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed the record and adopted the stipulations described in the Award.

**ISSUES**

The Assistant Director awarded benefits for a 70 percent work disability. Respondent does not dispute the finding that claimant is entitled to work disability but argues the percentage of disability should be reduced. According to respondent, the tasks have been incorrectly identified. Respondent also argues that the wage prong of the formula should be modified.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board finds that the Award by the Assistant Director should be affirmed. The Appeals Board so finds for the reasons stated in the findings and conclusions by the Assistant Director which are hereby adopted by the Appeals Board as its own.

In addition, the Appeals Board notes that one of the arguments made by respondent relates to the wage prong of the test for work disability. Respondent agreed that claimant's pre-injury wage was \$565 and that post-injury he went to work for Ragland Manufacturing at \$304.05 per week. According to respondent, claimant secured this job through a family member and, based upon the report of Gary S. Gammon, claimant could earn more as a fork lift driver in the Kansas City area. The Appeals Board finds that the circumstances presented are not similar to those presented to the Court of Appeals in Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995). The Appeals Board also finds from the evidence that claimant acted in good faith in securing subsequent employment. Copeland v. Johnson County Group, Inc. & Travelers Insurance Company, Docket No. 76,829 (Kan. App., opinion filed 8/29/97). The Appeals Board, therefore, considers it appropriate to use claimant's actual post-injury wage as the Assistant Director did in arriving at his conclusion that claimant had a 46 percent wage loss.

The Appeals Board otherwise adopts and approves the findings by the Assistant Director stated in the Award.

**AWARD**

**WHEREFORE**, the Appeals Board finds that the Award entered by Assistant Director Brad E. Avery dated April 9, 1997, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Derek R. Chappell, Ottawa, KS  
       John B. Rathmel, Overland Park, KS  
       Julie A. N. Sample, Administrative Law Judge  
       Philip S. Harness, Director